

## Message Text

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ACTION EA-12

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E.O. 11652: NA

TAGS: SHUM, RP

SUBJECT: AQUINO CASE: SUPREME COURT UPBRAIDS MILITARY TRIBUNAL

REF: MANILA 19788

1. SUMMARY: THE SUPREME COURT HAS REQUESTED THE MILITARY TRIBUNAL TRYING AQUINO TO DELAY RESUMPTION OF THE TRIAL UNTIL IT DECIDES ON SEVERAL DEFENSE MOTIONS FOR A RESTRAINING ORDER. CHIEF JUSTICE CASTRO SAID THE COURT'S UNANIMOUS REQUEST WAS "AN EXPRESSION OF RESENTMENT" AT THE TRIBUNAL'S "HASTE" IN DECIDING THE CASE "WITHOUT EVEN EXERCISING COMMON COURTESY" TOWARD THE COURT. WRITTEN REPLIES TO COURT QUESTIONS ARE DUE IN 45 DAYS. END SUMMARY.

2. AT THE CONCLUSION OF HEARINGS ON SEVERAL MOTIONS IN THE AQUINO CASE DECEMBER 15, THE SUPREME COURT ISSUED A CURT ANNOUNCEMENT: "IT IS THE UNANIMOUS SENSE OF THE COURT THAT THE RESPONDENT COMMISSION SHALL REFRAIN FROM CONVENING AND CONDUCTING ANY PROCEEDINGS IN THE CASES PENDING BEFORE IT AGAINST BENIGNO S. AQUINO, JR., AND BERNABE BUSCAYNO UNTIL AFTER THE COURT SHALL HAVE RESOLVED THE MOTIONS FOR THE ISSUANCE OF A RESTRAINING ORDER. THE COURT EXPECTS THE COMMISSION TO RESPECT THIS."

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3. CHIEF JUSTICE CASTRO ADDED THAT THE ANNOUNCEMENT WAS "AN EXPRESSION OF RESENTMENT" AT THE TRIBUNAL'S REACHING DECISIONS IN THE CASES WHILE THE DEFENDANTS STILL HAD MOTIONS PENDING BEFORE THE SUPREME COURT. "THERE SEEMS TO HAVE BEEN SOME HASTE ON THE PART OF THE MILITARY COMMISSION IN CONTINUING THE PROCEEDINGS WITHOUT EVEN

EXERCISING THE COMMON COURTESY OF INQUIRING WHAT THE SUPREME COURT IS DOING ABOUT IT." CASTRO WENT ON TO SAY THAT, SINCE THERE WAS A DEMONSTRATION OF LACK OF RESPECT FOR IT, THE JUSTICES DEEMED IT NECESSARY TO MAKE THE COMMISSION UNDERSTAND THE COURT, ACCORDING TO TIMES-JOURNAL.

4. DURING INTENSE QUESTIONING OF SOLICITOR GENERAL MENDOZA, JUSTICES FOCUSED ON (1) DIFFERENCES BETWEEN CIVIL AND MILITARY TRIALS; (2) IMPLICATIONS OF "REOPENING" VS. "RETRIAL" OF THE CASE; AND (3) WHETHER, WITH THE RESUMPTION OF THE TRIAL, THE CONVICTIONS AND SENTENCES OF NOVEMBER 25 HAD BEEN SET ASIDE OR NOT. DEFENSE ARGUES THAT MANUAL OF COURTS MARTIAL MAKES NO PROVISION FOR REOPENING A CONCLUDED TRIAL; THUS THIS MUST BE A REHEARING OR A RETRIAL, IN WHICH CASE THE MEMBERS OF THE ORIGINAL TRIBUNAL MUST BE DISQUALIFIED AS PREJUDICED. PROSECUTION CONTENDS THAT A MILITARY TRIAL IS A FUNCTION OF THE EXECUTIVE BRANCH RATHER THAN THE JUDICIAL, AND THAT ITS CONVICTION AND SENTENCE IS MERELY "RECOMMENDATORY." SINCE IT IS AN EXECUTIVE FUNCTION, THE PRESIDENT CAN INTERVENE AT ANY TIME, I.E., HE CAN ORDER THE TRIAL REOPENED TO HEAR DEFENSE ARGUMENTS BEFORE THE CASE LEAVES THE EXECUTIVE BRANCH. AT THE MOMENT, PROSECUTION ARGUES, THE CONVICTIONS AND SENTENCES STILL STAND, BUT THE TRIBUNAL IS "DUTY-BOUND" TO REEXAMINE THE EVIDENCE AND "PRONOUNCE LIMITED OFFICIAL USE

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A NEW JUDGMENT" AFTER DEFENSE PRESENTATION. ACCORDING TO BULLETIN TODAY, "THE JUSTICES SAID THAT IF THE GUILTY VERDICT OF AQUINO AND BUSCAYNO HAD NOT BEEN WAIVED IN THE REOPENING OF THE CASES, THEN THE TWO MIGHT BE FACED WITH THE SITUATION OF BEING GUILTY AND OBLIGED TO PRESENT EVIDENCE TO PROVE THAT THEY ARE INNOCENT. THE JUSTICES ASKED THE GOVERNMENT'S VIEWS ON THIS."

5. BOTH SIDES IN THE AQUINO CASE WERE ASKED TO PROVIDE WRITTEN ANSWERS TO SEVERAL QUESTIONS WITHIN 45 DAYS, I.E., BY EARLY FEBRUARY. BUSCAYNO'S MOTIONS HAVE NOT YET BEEN HEARD BY THE COURT.

6. FOREGOING BASED ON PESS ACCOUNTS. EMBOFF ATTENDED HEARING DECEMBER 14 BUT DID NOT RETURN THE 15TH.

7. COMMENT: PRESUMABLY AQUINO SUPPORTERS ARE PLEASED THAT SUPREME COURT REPRIMANDED THE MILITARY COMMISSION. IT APPEARS TO BE A MAJOR SLAP AIMED INDIRECTLY AT MARCOS, WHO IS UNIVERSALLY BELIEVED TO HAVE ORDERED THE TRIBUNAL TO GET THE TRIAL OVER WITH. THE 45-DAY WAIT FOR WRITTEN REPLIES, ON THE OTHER HAND, WILL BENEFIT THE GOVERNMENT

BY ALLOWING PUBLIC ATTENTION STRAY FROM THE CASE.  
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